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No. 71-376

IN THE

Supreme Court of the United States

October Term, 1971

KINNEAR-WEED CORPORATION, *Petitioner*,

v.

HUMBLE OIL AND REFINING COMPANY,
A Texas Corporation (now dissolved and merged into
Standard Oil Company, a New Jersey Corporation)
its successor and/or surviving corporation
and its assigns,
Respondent

PETITION FOR REHEARING OF PETITIONER FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT

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To The Honorable Supreme Court of The United States, and to the Honorable Justices of Said Court:

Petitioner prays that a writ of certiorari issue to review the judgment of the United States District Court for the Southern District of Texas, entered in the above-entitled case on November, 1969, and, review the judgment of the United States Court of Appeals for the Fifth Circuit, entered July 7, 1971, on Petition For Rehearing, under Rule 58 of Supreme Court.

QUESTIONS PRESENTED

The QUESTIONS PRESENTED I-XVI on the writ for certiorari are re-newed.

Question I was not supported by the necessary documents on the petition for the writ originally and are now presented to the Court for consideration.

APPENDIX D-1, hereto, infra, p. 20-22 is true copy of PLAINTIFF'S FIRST AMENDED ORIGINAL COMPLAINT Filed on the 14th day of January, 1955 in original suit C. A. No. 2363 in the United States District Court For The Eastern District of Texas, leave of Court first had and obtained on November 12, 1954.

APPENDIX D-2, hereto, infra, p. 23 is true copy of ORDER ENTERING PLAINTIFF'S FIRST AMENDED ORIGINAL COMPLAINT in C. A. No. 2363 on hearing the motion of Defendant in opposition to said complaint in open co rt on January 17, the court overruled Defendant's motion and sustained Plaintiff's FIRST AMENDED ORIGINAL COMPLAINT as filed on January 14, 1955.

APPENDIX D-3, hereto, infra, p. 24-25 is true copy of JURY DEMAND Filed January 14, 1955 after PLAINTIFF'S FIRST AMENDED ORIGINAL COMPLAINT filed on January 14, 1955.

APPENDIX D-4, hereto, infra, p. 26-30 is true copy of MEMORANDUM BRIEF IN SUPPORT OF PLAINTIFF'S JURY DEMAND Dated January 17, 1955 and filed on January 17, 1955 in open court.

APPENDIX D-5, hereto, infra, p. 31-32 is true copy of proceedings had in open court on January 17, 1955, before Judge Lamar Cecil presiding in C. A. No. 2363 Kinnear-Weed Corporation, Plaintiff, vs. Humble Oil And Refining Co., Defendant, in which on 1-17-55 Court Overrules Demand for Jury Trial, said JURY DEMAND having been presented by Plaintiff on oral arguments and in con-

nection with MEMORANDUM BRIEF IN SUPPORT OF PLAINTIFF'S JURY DEMAND, APPENDIX D-4 above mentioned.

It is respectfully submitted that in view of the APPENDICES D-1 through D-5 that Petitioner complied with all of the necessary requisites of 28 U.S.C., Rules 2, 15, 38 and 39, FRCP, and of the 7th Amendment of the U. S. Constitution to entitle Petitioner to trial by jury. This right of trial by jury was denied to Petitioner. This case must be reversed and jury demand granted and this case remanded by Order of the Supreme Court to the United States District Court For The Eastern District of Texas, Beaumont Division, with direction to said District Court to enter order granting Petitioner trial by jury on the issues involved in said PLAINTIFF'S FIRST AMENDED ORIGINAL COMPLAINT, or, as may be amended with issues triable by jury. *The right of trial by jury shall be preserved* in suits at common law, where the value in controversy shall exceed twenty dollars as provided by said *7th Amendment to the U. S. Constitution.* PLAINTIFF'S FIRST AMENDED ORIGINAL COMPLAINT is cast in law, and the value in controversy exceeds $255,000,000.00 Dollars. This is a bona fide suit and of great public importance since it involves a patent granted by the U. S. Commissioner of Patents to a citizen of the United States. Its importance is reckoned by its great advantage to mankind, since the Drill Bit which has become known in the Well Drilling Art in the Rotary System of Drilling as the "jet bit" that has proven to drill up to Five (5) times faster than old conventional bits of all makes and kinds, thus effecting savings up to five times over the cost of drilling deep wells, such wells for oil and gas. The Kinnear "jet bit" has replaced the conventional bits theretofore

used in Rotary Well Drilling. This great saving is passed on to the general public and the peoples of the world, for for example, gasoline now priced at approximately 30 to 38 cents per gallon plus tax thereon would cost the general public 75 to 85 cents per gallon, plus tax, if it were not for the patented Kinnear invention on the "jet bit", only one of which, has ever been issued by the U. S. Patent Office, and that to the inventor C. W. Kinnear.

NEW QUESTION PRESENTED XVII

Whether Judge Lamar Cecil sitting as Judge in C. A. No. 2363 presided illegally and practiced a fraud upon Petitioner and upon the U.S. District Court For the Eastern District of Texas, Court of Appeals For Fifth Circuit, and upon The Supreme Court of The United States when he and his wife were using and paying for Accused "jet bits" in secrecy and without knowledge of Petitioner through ~~ostensible~~ secret partnerships names Meredith, Clegg & Hunt, The Meredith Co., and Socs V atis of some of like kind and brand name accused "jet bits" from unauthorized makers and sellers of said accused "jet bits" used by Respondent and in issue before Judge Cecil who ruled upon the issues raised by Respondent's Answer to Petitioner's Complaint of infringement and urged before Judge Cecil as to the infringement and validity of Petitioner's Patents in suit as issues of defense to invalidate said patents and prevent recovery of damages against Respondent for alleged infringement of Petitioner's Patents in suit which adverse decision of Judge Cecil against Petitioner and for Respondent invalidating Petitioner's patents in suit and holding that said accused "jet bits" used by Respondent were non-infringed was also a decision in favor of Judge Cecil and his wife to protect them against infringement of Petitioner's

patents in suit and the recovery of damages for infringement of their use of accused "jet bits" of like kind and brand name?

The following TABLE OF 46 WELLS DRILLED AND PARTICIPATED IN by Judge Cecil and wife from 1951 through 1962 for the life of the Kinnear Patents in suit which expired on July 10, 1962, shows the year accused "jet bits" were used by partnership name of the wells, ~~ostensible~~ secret partnership name, the payment of the Cecil's proportionate part for drilling of said wells with accused "jet bits" and the amount of money paid by the Cecil's for same as reflected by the Cecil's Joint Income Tax Returns, Schedule C-2 deducted as intangible drilling costs in their self named Oil Operators status as shown on said Income Tax Returns and the reference where these facts can be found in the Certified APPENDIX-RECORD ON APPEAL filed in the Supreme Court by the Clerk of Court of Appeals below.

The information as to the kind and brand name of "jet bits" used and paid for proportionately by the Cecil's through their ~~ostensible~~ secret partnerships are found from the referenced testimony taken from the APPENDIX-RECORD ON APPEAL of Vols. I, II and III and set forth in the TABLE on page 41 of PETITION FOR WRIT OF CERTIORARI opposite the respective well or group of wells drilled by said named Partnerships namely, Meredith Clegg & Hunt, The Meredith Co., and Socs Vratis. being the same wells hereinafter set forth under the following heading entitled:

TABLE OF 46 WELLS DRILLED AND PARTICIPATED IN WITH SECRET NAMED PARTNERSHIPS BY LAMAR CECIL AND WIFE USING "jet bits"

Years Cecil Used "jet bits"	Same Accused "jet bits" to drill wells by Humble used by Joint Partnership in drilling wells named below—Area and County	Judge Lamar Cecil & wife paid porportionate part all costs of "jet bits" used by Secret Partnerships in Joint Venture in name of—	APPENDIX—RECORD ON APPEAL, Cecil's Joint Income Tax Return Schedule C-2, Year, Vol. I (A.....) Deducted as Intangible Drilling Cost as Oil Operators by Cecil's
1951	Spindletop Area—5 wells	Meredith, Clegg & Hunt	1951—Vol. I (A.211) — $3429.36
1954	B. F. Mansfield #1	Socs Vratis	1954—Vol. I (A.212) — 2250.00
1954	M. L. Gamble #1	The Meredith Co.	1954—Vol. I (A.212) — 3125.00
1954	Fleming #1, Orange Co.	" " "	1954—Vol. I (A.212) — 1615.56
1954	Farris #1, Liberty Co.	" " "	1954—Vol. I (A.212) — 1241.55
1955	Hackberry, La.	Socs Vratis-Julian Fertita	1955—Vol. I (A.213) — 3285.42
1955	Guerra #1, Caldwell Co.	W. C. Dunlap, Jr. (Socs Vratis)	1955—Vol. I (A.213) — 1171.88
1955	Walles #1, Orange Co.	Cokinos (The Meredith Co.)	1955—Vol. I (A.213) — 1300.00
1955	C. Murphy #1, Harris Co.	Socs Vratis	1955—Vol. I (A.213) — 4500.00
1956	C. Byrd #1, Tom Green Co.	" "	1956—Vol. I (A.214) — 3180.00
1957	Exploration Plan-9 Wells	The Meredith Co.	1957—Vol. I (A.215) — 5018.26
1957	Jefferson Oil Co.-Hull	Socs Vratis-Julian Fertita	1957—Vol. I (A.216) — 1100.00
1958	Edwards; Edwards-Shelby; Shelby; Tyrrell-Dubois	The Meredith Co.	1958—Vol. I (A.217) — 2930.14
1958	Blk #154-Caplen, Galveston	" " "	1958—Vol. I (A.217) — 5333.34
1958-59	Edwards; Edwards-Shelby; Shelby; Tyrrell-Dubois	" " "	1958 (A.218) — 1881.44
1959-60	Doornbos-Vickburg,	" " "	1959—Vol. I (A.219) — 1881.44
1961	Exploration Plan-7 Wells	" " "	1959—Vol. I (A.222-23) 5653.17
1962	Exploration Plan-5 Wells	" " "	1961—Vol. I (A.226) — 13,400.51
			1962—Vol. I (A.229) — 16,094.20

The TABLE OF THE 46 WELLS above with references to document same from the APPENDIX-RECORD ON APPEAL clearly shows that Judge Lamar Cecil and wife Mary Reed Cecil were using alleged accused infringing "jet bits" of some of the same kind and brand name made and sold by unauthorized bit manufacturers such as Hughes Tool Co., Reed Roller Bit Co., H. C. Smith Rock Bit Co., Globe Oil Tools Co., Security Engineering Co. and the C-P Bit of Chicago Pneumatic Tool Co. and others and paying their proportionate part of the costs of said bits used by the Ostensible Partnerships namely Meredith Clegg & Hunt, The Meredith Co., and Socs Vratis. The unauthorized use of "jet bits" by Judge Cecil and wife through said Secret Partnerships being some of the same kind and brand name as those alleged to be used by Respondent in issue before Judge Cecil and upon which Judge Cecil heard and determined the issues against Petitioner and for Respondent holding Petitioner's Patents in suit void and invalid and non-infringed was a fraud practiced upon Petitioner and upon said District Court and Court of Appeals below and upon this Supreme Court. This is so because Judge Cecil presiding in secrecy in C. A. No. 2363 in the United States District Court For the Eastern District of Texas in Petitioner vs. Respondent Humble and passing upon and ruling upon the questions of validity and infringement of Petitioner's Patents in suit when at the same time he had prior to, during and after the trial of said C. A. No. 2363 was using some of the same kind and brand "jet bits" which petitioner alleged in said suit were infringing Petitioner's Patents in suit. This dual role of Judge Cecil as Judge in the Humble case while using the same kind and brand name "jet bits" from unauthorized makers and sellers of same as was being done

by Respondent Humble was and is a fraud practiced upon Petitioner by Judge Cecil and upon the Federal Courts named above.

Judge Cecil thereby denied Petitioner by bias and prejudice a fair trial in a fair tribunal as he had knowledge that he was using unauthorized "jet bits" in the wells drilled by the Secret Ostensible Partnership of which he was a part. In the trial of 68-H-40 before Judge Connally had all of the facts set out in TABLE OF 46 WELLS, etc., before him and the record evidence thereof and in the APPENDIX-RECORD ON APPEAL and the whole record in said case, and found, in his Findings of Fact Vol. III (A. 819-855), in APPENDIX-RECORD ON APPEAL, and particularly under the heading "Judge CECIL AS AN 'INFRINGER OF PLAINTIFF'S PATENT" in Vol. III, pages 841-842 that Judge Cecil (1) invested sums of money from 1952 until time of his death in 1958 he invested money from time to time in oil drilling ventures. During the period of time stated Judge Cecil, in company with friends and associates, invested in perhaps some ten to twelve ventures of this character, with one Vratis as operator; (2) Of the wells drilled under this arrangement in perhaps some five or six instances "jet bits" were used; (3) In approximately three instances (Mansfield Well, Orange County, Texas, 1954; Farris Well, Liberty County, Texas, 1953; and Murphy Well, Harris County, Texas; 1955), Judge Cecil visited the drill site while the well was in progress. And (4) From his general knowledge of the oil business, Judge Cecil probably was aware of the significance of a "jet bit". He was advised by Vratis, or by others, that a jet bit was in use in the drilling of one or more of these wells in which he had an interest.

Judge Connally made no findings as to the investments

of Judge Cecil and his wife Mary Reed Cecil with Meredith, Clegg and Hunt and its successor The Meredith Co. although the said TABLE shows ~~a~~ documented with references from the APPENDIX-RECORD ON APPEAL in Vol. I, at page 234 thereof that Judge Cecil and his wife Mary Reed Cecil invested in some 30 or more wells in joint ventures with Meredith, Clegg & Hunt and its successor The Meredith Co., and paid their proportionate part of all "jet bits" used on said 30 or more wells as per their joint Income Tax Returns, Schedule C-2, See Vol. I (A. 211-229) of APPENDIX-RECORD ON APPEAL a certified copy of which was forwarded and filed in this case 71-376 in The Supreme Court. Also, refer to Record Reference or Testimony in TABLE of wells on pages 41 and 42 in PETITION FOR WRIT OF CERTIORARI on file herein, which latter references give names of wells, years drilled, name of ~~Ostensible~~ Secret Partnership that drilled wells, and, that said wells were drilled with accused "jet bits" of the kind and brand name as some of the "jet bits" alleged to have been used by Respondent Humble in C. A. NO. 2363 tried by Judge Cecil. Judge Connally made no findings on these 30 wells.

It shows from above, a solemn finding of fact that Judge Cecil used and paid his proportionate part of the cost of "jet bits" used in some 10 or 12 wells drilled in the Joint Venture with Socs Vratis as found by Judge Connally, that Judge Cecil knew "jet bits" were used in at least 5 or 6 of said wells, although the record shows all of the wells in which Judge Cecil participated in with Socs Vratis and Judge Cecil and his wife participated in with Meredith, Clegg & Hunt and its Successor The Meredith Co. paid their proportionate part of the costs of "jet bits", as well

as, all other expenses in the drilling and completion of said wells.

Judge Cecil's certain knowledge as found by Judge Connally that he knew "jet bits" were used in said wells participated in the Secret Partnership under the name of Socs Vratis and he certainly knew of the some of the same "jet bits" being presented in the evidence in the Court room as alleged infringing unauthorized "jet bits" purchased and used by, Respondent Humble in C. A. No. 2363 placed Judge Cecil in double role as adjucator of the issue on the accused "jet bits" used by Respondent in C. A. No. 2363 on the one hand, and he and his associates in secrecy on the other hand without knowledge of Petitioner purchased and used the same kind and brand name "jet bits." And while he was deciding the issue of validity and infringement on the same "jet bits" in C. A. No. 2363 that he was practicing a fraud upon Petitioner and the Federal Courts involved by illegally sitting and determining the issues of Validity and infringement in C. A. No. 2363. That Judge Cecil's acts and omissions denied Petitioner a fair trial in a fair tribunal in violation of the 5th Amendment to the U. S. Constitution under the "due process clause thereof. For the reasons stated Petitioner is entitled to a new trial. That said judgment of Judge Cecil rendered in C. A. No. 2363 should be reversed and remanded for new trial.

NEW QUESTION PRESENTED XVIII

Whether Respondent's 3 cone bit Exhibit D-31 was introduced in evidence at the original trial C. A. No. 2363 in the U. S. District Court For the Eastern District of Texas, and, defended as a genuine and authentic bit exhibit in 68-H-40 in The U. S. District Court For the Southern

District of Texas by Respondent, its attorneys and employees in concert with Hughes Tool Co., its attorneys and employees practiced fraud and conspired to practice fraud upon Petitioner, said District Court, Court of Appeals below and The Supreme Court of The United States?

The QUESTION PRESENTED XVIII as to the genuineness and authenticity of D-31 known as Plftf. Ex. No. 110 in this record. This is the 3 cone bit claimed by Respondent upon introducing of same in C. A. No. 2363 to be an authentic and genuine bit and used as such in suit as an anticipatory reference of 1910-1912 vintage, whereas, it is a fraudulent piece of evidence presented by Respondent who must vouch for its authenticity as being a genuine bit exhibit. The introduction caused Judge Cecil to hold Petitioner's Patents in suit void and invalid and non- infringed. The record in 68-H-40 along with that of C. A. No. 2363 where D-31 was first introduced in evidence by Respondent shows said D-31 to be a false and fraudulent bit exhibit, because:

At page 2494 in Vol. No. 9 of the Record of which The Supreme Court has a copy thereof after introducing said D31 as a Respondent (Defendant) bit Exhibit on said page 2494, the following testimony of Hughes Tool Co., Chief Research Engineer Floyd L. Scott he testified, as follows:

"Q. (Continuing by Mr. Tucker): Can you estimate when that bit was made from its appearance?

A. Yes, we looked up the old drawings made by Brown and Sharp Manufacturing Company and we could identify it from those."

At pages 750-752 of Vol. VII of the Transcript of the Record in 68-H-40, Mr. Tucker states as follows:

"MR. TUCKER: If I can change hats for just a minute, I represent some fourteen Companies that have been accused of Patent Infringement by Kinnear-Weed Corporation. These are some of the cases on Judge Ingraham's Docket, cases filed in the early sixties.

It is my intention, and I am sure it is the intention of the attorneys representing the other oil Company Defendants in those cases *to rely on D-31* as an anticipation of the Kinnear-Weed interpretation of the claims of the Kinnear Patent and the same way we did in Beaumont.

It is a devastating piece of evidence in any patent suit based on a 1940 or '45 Patent claiming they jet to the bottom of the hole for obvious reasons, this thing does it.

Clearly this would be one of a number of anticipatory prior art references, and I think your honor should know that, *and we will rely on it if they continue to press this case.*"

The above statements by Counsel Garret R. Tucker, Jr., is relying on D-31 and he does this in 68-H-40 knowing full well that D-31 is a fraudulent piece of evidence and that he is using it as an authentic and genuine bit of the 1910-1912 era which is the time period mentioned by Hughes witness Floyd L. Scott on said Page 2494 in Vol. 9 of the Record in C. A. No. 2363. On said page 2494 Scott says it was made in 1911 from a ledger entry. The ledger on pages 2532-2525 on three pages marked D-54 and several entries saying they sold some 3 cone bits in 1910-1911 and 1913. How in the world could a ledger entry show the construction of a bit. The ledger entries merely say they sold some 3 cone bits but this could not possibly show how the 3 cone bits were constructed so the ledger entries on D-54 is of no value as to showing D-31 bit of

its construction and arrangement of the parts sold in the 1910-1911 and 1913 by Sharp-Hughes Tool Co. and later known from 1916 on to the present time as Hughes Tool Co.

Now we lead up to the fraud and conspiracy to practice fraud by Respondent its attorneys and employees in concert with Hughes Tool Co., witnesses Floyd L. Scott, particularly saying on page 2494 as quoted above from his testimony in C. A. No. 2363 that "*we could identify it from those*".

Whereas, The Brown & Sharpe Mfg. Co., drawing shown in APPENDIX as A-2 between pages 138 and 139 of the PETITION FOR WRIT OF CERTIORARI in this case 71-376 before the Supreme Court the Brown & Sharpe Mfg. Co. drawing A-2 shows that the water courses 17 (inserted by Counsel for Petitioner for Identification only) thereof are so positioned so that water pumped through said water course 17 (3 in number) will direct the water or drilling mud pumped therethrough to hit on top of the cones. D-31 shows the water course therein to direct the water to miss the cones and hit on the outer bottom portion of the well bore like present day "jet bits". However, see the testimony of Wiley Noble Pltf's. Ex. No. 143, at page 108 stated that he viewed the Brown & Sharpe Mfg. Co. drawing at Hughes Tool Company at the arrangements made by Mr. Garret R. Tucker, Jr., with Mr. Lyle L. Payne of Hughes Tool Co. about 30 days before he gave his deposition on June 18 and 19, 1969. That he saw Brown & Sharpe Mfg. Co., drawing dating back about the 1st of Jan., 1909. See Brown & Sharpe Mfg. Co., drawing produced by Lyle L. Payne of Hughes Tool Co., on June 10, 1969 and shown as A-2 between pages 138 and 139 of PETITION FOR WRIT OF CERTIORARI in this case

71-376 which is dated Jan. 6, 1909. Wiley Noble, Defendant's Expert Witness having been Chief Engineer of Reed Roller Bit Co. for many years in answer to question by Petitioner's Counsel in Pltf's Ex. No. 143, page 122, line 1 of his testimony stated as to what drawings of Browne & Sharpe Mfg. Co. showed that he viewed at Hughes Tool Co., on or about May 20 or 21, 1969 that if water was pumped through the water courses of such bits, that:

"*** but I would say it struck on the cones"

This is positive proof that Mr. Garret R. Tucker, Jr. Counsel for Respondent who engaged Lyle L. Payne to disclose 3 cone bits shown on the Brown & Sharpe Mfg. Co. drawings to Wiley Noble his expert witness that said drawings showed the water course in the Brown & Sharpe Mfg. Co. drawings from which Mr. Floyd Scott says Sharp-Hughes Tool Co. made 3 cone bits to be so positioned and arranged through the bit head to direct the water to *"hit on the cones"* as stated by Noble. Therefore, Mr. Scott perjured himself as one of the Brown & Sharpe Mfg. Co. drawings viewed by Noble for Mr. Tucker show the water course positioned so that the water pumped through the water courses of the 3 cone bits manufactured therefrom would *"hit on the cones"*. Mr. Garret R. Tucker, Jr. had this information from Wiley Noble who reported to him about the Brown & Sharpe Mfg. Co. drawings, and yet, Mr. Tucker says he *relies upon D-31 as being an authentic and genuine bit.*

Mr. Tucker is guilty of misrepresenting and misleading the U. S. District Court in 68-H-40 before Judge Connally, the Court of Appeals below and this Supreme Court on D-31. He introduced it in C. A. No. 2363 and had to vouch for its authenticity and genuineness. He knew he

had done so by his witness Floyd L. Scott of Hughes Tool upon which he invalidated the Kinnear Patent in suit, and upon which Judge Cecil held the Kinnear Patent in suit to be non-infringed also. Mr. Tucker knowing this after the information his Expert Witness Mr. Wiley Noble who view the Brown & Sharpe Mfg. Co. drawings with Lyle L. Payne of Hughes Tool Co., at their plant on May 20 and 21st, 1969 about 30 days before the trial of 68-H-40 at Hughes Tool Co. plant.

The Patent to H. R. Hughes, No. 959,540 Issued May 31, 1910 application filed Mar. 27, 1909 shows 3 cone Roller Drill shows design of 3 water courses that will direct the water pumped therehtrough to *"hit on top of the* cones, the same as shown in the Brown & Sharpe Mfg. Co. drawings dated Jan. 6, 1909. The drawings in both show that Hughes had the water course the same. This shows how any reasonable person would proceed and is proof the way Hughes made his 3 cone bits in 1910-1912 era according to the drawings and *not like D-31 showing* water to "miss the cones" as in the 1945 Patent to C. W. Kinnear.

He knew that the Brown & Sharpe Mfg. Co., drawings of the 3 cone bit from which Hughes made its 3 cone bits in 1909-1910-1911-1913 having been made from said drawings that they were designed to direct water through its 3 water course to *"hit on the cones"*. D-31 shows the water courses in its design to direct the water *"to miss the cones and hit upon outer bottom portion of well hole"*. Had Mr. Tucker had Brown & Sharpe Mfg. Co. drawings to show design of D-31 to direct the water to miss the cones and hit Upon the outer bottom Portion of the well hole as in the Kinnear Patent he would produced it at the trial of C. A. No. 2363 at Beaumont in Feb.-April, 1955. He never did have a Brown Sharpe Mfg. Co. drawing that Hughes

Tool Co. or its predecessor Sharp-Hughes Tool Co., made its 3 cone bits in the 1910-1912 era as Mr. Scott testified to on page 2494 of the Kinnear-Weed vs. Humble suit C. A. No. 2363.

Mr. Tucker is guilty of fraud in misleading both the District Courts below. In C. A. No. 2363 before Judge Cecil by introducing D-31 in evidence and upon which Judge Cecil held Petitioner's Patents in suit void and invalid and also Non-infringed thereby. Mr. Tucker is guilty of fraud in misleading and misrepresenting to Judge Connally that D-31 (Pltf's Ex. No. 110 in 68-H-40) that he was "*relying*" upon said false and fraudulent bit as a genuine bit. This is a misleading and misrepresentation that D-31 was an authentic and genuine bit. He said he was relying upon it and that no doubt other attorneys having suits against them by Petitioner would rely upon D-31. If Tucker relied upon D-31 he has to vouch for its authenticity and as being a genuine piece of evidence. He knows it is a false and fraudulent bit and Floyd L. Scott likewise knows. So does Lyle Payne. This shows the fraud and conspiracy to defraud practiced upon Petitioner and the District Courts below, the Court of Appeals below, and this Supreme Court which denies Petitioner a fair trial in a fair tribunal, in violation of "*due process of law*" under 5th Amendment of U. S. Constitution. Mr. Tucker and these witnesses should be dealth with harshly for causing Petitioner to go through with this long tortuous suit for some 16 years. These fraudulent begotten Judgments of both District Courts and Court of Appeals below should be reversed and remanded for new trial for fraud and conspiracy to practice fraud by Respondent, its attorneys and employees and Hughes Tool Co., and its witnesses Scott and Payne who perjured themselves in testifying in both C. A. No.

2363 and 68-H-40 District Courts below. Furthermore, Petitioner is entitled to damages since its patents have expired in 1962, July 10, and all of the grevious law suits to which it has been put without relief for these 16 years. Petitioner is also entitled to reasonable attorneys fees, and its costs and expenses incurred by reason of these abortive trials caused by Respondent and the others named above.

Petitioner prays that this Petition For rehearing be granted and for all relief requested in the Petition For Writ of Certiorari, and, that oral arguments be granted.

Dated: December 2, 1971

Respectfully submitted,

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Counsel for Petitioner

CERTIFICATE OF COUNSEL

I, William E. Kinnear, Counsel for Kinnear-Weed Corporation, Petitioner in the above entitled and numbered case, hereby certifies that the above and foregoing, PETITION FOR REHEARING, and referenced TRANSCRIPT OF RECORD, APPENDIX RECORD ON APPEAL are presented in good faith, and not for the purpose of delay, restricted to the grounds therein specified, and in the opinion of counsel, well founded in law and proper to be filed herein.

William E. Kinnear

PROOF OF SERVICE

I, William E. Kinnear, Counsel for Kinnear-Weed Corporation, Petitioner herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the December 3, 1971, I served required copies of the foregoing PETITION FOR REHEARING, by mailing said copies in duly addressed envelopes by U. S. Mail, postage prepaid to: Mr. Garrett R. Tucker, Jr., Esq., One Shell Plaza, Houston, Texas 77002, and to Mr. C. O. Ryan, Esq., Gulf Building, Houston, Texas 77002.

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